



COMMENTS FROM MAPERS REGARDING
DETROIT BANKRUPTCY SETTLEMENT LEGISLATION

May 15, 2014

The Michigan Association of Public Employee Retirement Systems (MAPERS) represents nearly 120 independent local pension plans throughout the state of Michigan, ranging geographically from Monroe County to the Upper Peninsula. MAPERS' membership is a coalition which includes both plan sponsors – employers – as well as plan beneficiaries – employees – as Trustees.

Though the Detroit General Retirement System is a plan member of MAPERS, the goal of our statement is to look at the proposed legislation through a statewide lens; in other words, are there consequences – unintended or otherwise – to pensions and retirement systems across the state because or in spite of the goals of the legislation. We also will provide some recommended solutions to some issues we see in the bills.

In large part, the legislation tracks the requirements of the settlement. Noting that, however, many of our concerns stem from one root: that MAPERS looks at each piece of legislation for how closely it aligns with the agreements between the City of Detroit and the State, with an eye for what is appropriate to be handled via legislation, and what is most appropriately handled in the City's Plan of Adjustment and contribution agreement. Specifically:

PA 314 Amendments in HB 5570

PA 314 of 1965 (hereafter PA 314) is a statute that applies to all retirement systems across Michigan, regardless of size and/or employer sponsorship. From the smallest village plan to Detroit, PA 314 assigns fiduciary responsibilities for pension trustees, outlines trustee and board conduct and ethics, and even provides limits on asset allocations (note: this is unique, in that most states simply have a prudent investor standard). PA 314 also makes clear that Trustees are held to the *highest* fiduciary standards allowed by law: Trustees may be held personally liable for the decisions they make.

PA 314 was very recently amended in PA 347 of 2012. PA 347 contains what were, at the time, all of the Governor's pension reform and best-practice initiatives. These apply to *all* systems across the state and include:

- a. Pension boards must establish *and publish* a budget and ultimately its expenses, including education, and travel expenses (Sec. 13 (3)(H) – (N))

Michigan Association of Public Employee Retirement Systems

525 E. Michigan Ave. #409 Saline, MI 48176

Phone: (734) 944-1144 or 1-800-475-4200 Fax: (734) 944-1145

E-mail: info@mapers.org Web site: www.mapers.org

- b. Travel is limited on an overall plan basis and per-trustee (Sec. 13 (6))
- c. Boards must establish *and publish* policies and procedures regarding travel, education, and ethics (Sec. 13 (3)(H) – (N) and Sec. 13E)
- d. Boards have a mechanism to *remove* trustees who do not comply with these policies (Sec. 21)

Given those initiatives in PA 347, MAPERS understands that the City of Detroit has now adopted all of those policies in compliance with the act, and that the old oft-publicized travel abuses of the past have long since been address by those respective systems.

A few specific concerns:

1. The legislation uses the term “qualified system,” and then defines that term to mean a system with a population of more than 600,000. However, *all* retirement systems in Michigan are referred-to in the industry as “qualified retirement systems (meaning “qualified under provisions of the Internal Revenue Code). This could lead some plans, and especially some investors, to mistakenly believe that all of the provisions amending PA 314 specific to Detroit actually apply to every system. One can imagine not only confusion, but reluctance to invest. Instead, if one is to define a certain city and a set of parameters for that certain city, that should be done in the Plan of Adjustment and funding agreement, not in a statute meant to govern an entire state and all of its subdivisions.
2. The legislation also further-restricts travel and education of plan Trustees. MAPERS believes-in and supports all provisions currently in law (referenced above) which provide Trustees with opportunities to receive the education necessary to fulfill the great fiduciary responsibility of their position (also reference above re: personal liability). MAPERS believes that the limitations and guidelines in currently in PA 314 - from PA 347 of 2012 - now provide appropriate limitations while allowing trustees to get the education they need.
3. The establishment of the investment committee within the legislation also invites concern. As previously noted, the governance provisions applicable to the City of Detroit should be more appropriately addressed in the above referenced documents (Plan of Adjustment, contribution agreement), which are in turn backed-up and enforced by the full weight and jurisdiction of the bankruptcy court and its terms as well as the Oversight Commission. PA 314, then, is not the right place for further enforcement, for all of the reasons previously outlined in the first point above. In fact, it is beyond the proverbial “belt-and-suspenders” approach and could instead have consequences for plans across the state. Instead, all the legislature really needs is the legal authority – which this bill could be – to enter into these types of agreements, with these kinds of terms in the Plan of Adjustment and the contribution agreement.

MAPERS believes that amendments to PA 314 in this legislation are more appropriate to be provided in the City’s Plan of Adjustment and contribution agreement, and the governance provisions which are an attachment to those agreements. If the legislature wants to instead amend PA 314 to give the ability for the city and the State to enter into such an agreements, as well as entities created under that agreement and subject to the fiduciary responsibilities under PA 314, then that is more appropriate.

Home Rule Amendments in HB 5568 & 5569

1. Data does not support Defined Contribution (DC) plans as being any less expensive than Defined Benefit (DB) plans; in fact, it shows the opposite. Further, it appears that negotiations thus far are leaning towards a hybrid plan for Detroit, not specifically a DC plan. The danger is making this presumption then for every plan in the state; that in all cases DC is the better option. MAPERS out of principle cannot support mandatory movement from DB to DC plans.
2. The legislation also requires retiree health care to be offered only as a health care savings account arrangement. MAPERS opposes this concept on principle at any level: large plan or small. This provision is simply not needed, and isn't a requirement of the bankruptcy proceedings.
3. As above, if this concept needs to be done, it should be done in the Plan of Adjustment, funding agreement, and governance documents, not in statute.

MAPERS understands that some of the provisions in the legislation outlined above are not consistent with the actual plan and related documents regarding the bankruptcy proceedings, and therefore does not support legislation that is not in agreement, or supersedes, the actual agreement between the parties. MAPERS is working quickly on some suggested changes to the legislation discussed above. We are eager to work with the Chair and members of the committee as well as the sponsors of the legislation in question. Thank you for your willingness to discuss our concerns and work with MAPERS on solutions.